



# Public Notice



Applicant: The Public

Date: July 31, 2000  
Expires: September 29, 2000

In Reply Refer To: File No. 00-900-001-0

PROPOSED EROSION MITIGATION POLICY FOR SHORE PROTECTION PROJECTS  
ALONG THE EASTERN SHORELINE OF LAKE MICHIGAN OF THE LOWER  
PENINSULA OF THE STATE OF MICHIGAN

1. Purpose of this Notice

To assist in the evaluation and development of the Detroit District's mitigation policy for shore protection projects to improve consistency and predictability of the regulatory program. This public notice reflects the District's current standard procedures when evaluating Individual Permits on case by case basis. It is based upon the current state of scientific knowledge, experience, and understanding. By formalizing a written policy, applicants will have better opportunity to know beforehand what to expect during permit review and plan accordingly.

2. Background

a. Shore protection structures can adversely impact the properties of others by interrupting the normal movements of sand alongshore (littoral drift) and/or by eliminating or reducing the contribution of materials to the littoral system via natural erosion from dunes, bluffs and other upland areas adjacent to the shoreline.

Note: "Natural erosion" is background erosion, erosion that would result in the absence of man's influence on, or alteration of the shoreline (i.e. structures). The overall erosion rate consists of "natural" and "man made" components.

b. The impacts of proposed structures on alongshore movements of sand have historically been a major consideration in whether to issue, modify, condition, or deny permit requests, particularly for groins and jetty structures. Proposals are subjected to a technical review by the Corps which often results in limitations on the numbers and/or dimensions of such structures, or other special conditions.

c. As experience and scientific understanding of shore processes has progressed, additional concern and emphasis has

arisen for the impact of structures which reduce the natural, background contribution of sand from bluffs/dunes. Corps' technical experts have determined that under certain circumstances, natural erosion from bluffs contributes significant amounts of sand to the nearshore area. Elimination or substantive reduction of this sand supply generally will result in significant increases in erosion on neighboring properties.

d. The importance of sand contributions from eroding bluffs/dunes to the nearshore environment and neighboring properties must be balanced with an individual property owner's right to protect their property. In cases where structures are endangered and/or substantial set-backs are not possible, it may be appropriate to consider authorization of structures with special conditions requiring ongoing beach nourishment as compensation to offset the adverse impacts associated with the reduction of natural contributions of sand to the nearshore system.

e. Compliance and enforcement responsibilities associated with ongoing beach nourishment requirements pose a serious administrative burden upon regulatory and support resources. Most structures that reduce erosion from bluffs/dunes also have the effect of reducing the natural contribution of sand to the nearshore environment. However, the degree of impact varies according to the specific project and the site circumstances. Administrative burdens must also be considered and balanced in light of the magnitude of those reductions. Ongoing beach nourishment requirements must be limited to circumstances where the contribution of sand due to natural erosion is significant.

### 3. Erosion Mitigation Policy:

a. Existing structures - In light of legal constraints and the rule of reasonableness, grandfather such structures until they are repaired or replaced.

b. Repair/rehabilitation of existing structures - Mitigation discretionary on a case by case basis, determined by Corps technical expert review. Age and history of structure will be considered.

c. New structures potentially covered by regional or nationwide permits - Subject to conditions in e. below.

d. Individual permits - Mitigation in accordance with Corps technical expert review.

e. When the following circumstances are involved, the need to consider beach nourishment is sufficient that Corps technical review is required:

(1). A proposed project that may act as a barrier to bluff/dune erosion, including revetments, seawalls/bulkheads, long groins, or groin fields with coarse fill.

(2). A coastline comprised of a cohesive nearshore with sandy bluffs or dunes, with a long term, average annual bluff/dune recession rate of  $\geq 2$  feet (0.6m), as based on either:

(a). Great Lakes Coastal database (See attached)  
or

(b). Calculated for the specific site.

f. In instances where the proposed structures would reduce or eliminate the sand contribution (via natural erosion) to the nearshore area a volume of at least 2.0 cubic yards per year, per lineal foot of coastline reach, such that adjacent properties would be adversely affected, the following permit actions shall be considered:

(1). Avoidance of the project impact/site.

(2). Modification of proposed structures to eliminate or minimize impacts.

(3). Requirement of ongoing beach nourishment to mitigate for the reduction in natural sand contributions.

Note: Beach nourishment shall continue to be a "last resort" and shall be considered only after avoiding and minimizing project impacts. The preferred alternative is adequate set-back to reflect the erosion potential of the site. This policy is not intended to encourage the sale or purchase of property in areas subject to high erosion risk, nor to encourage subdivision of lots that results in limited set-back potential.

### 3. References

a. 33 CFR Part 320.2(b) Section 10 of the Rivers and Harbors Act approved March 3, 1899 prohibits the unauthorized

obstruction or alteration of any navigable water of the United States. The construction of any structure in or over any navigable water of the United States, the excavating from or depositing of material in such waters, or the accomplishment of any other work affecting the course, location, condition, or capacity of such waters is unlawful unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of the Army. The instrument of authorization is designated a permit.

b. 33 CFR Part 320.4(g)(2) Because a landowner has the general right to protect property from erosion, applications to erect protective structures will usually receive favorable consideration. However, if the protective structure may cause damage to the property of others, adversely affect the public health and safety, adversely impact floodplain or wetland values, or otherwise appears contrary to the public interest, the district engineer will so advise the applicant and inform him of possible alternative methods of protecting his property. Such advice will be given in terms of general guidance only so as not to compete with private engineering firms nor require undue use of government resources.

c. 33 CFR Part 320.4(r)(1) Mitigation is an important aspect of the review and balancing process on many Department of the Army permit applications. Consideration of mitigation will occur throughout the application review process and includes avoiding, minimizing, rectifying, reducing, or compensating for resource losses. Losses will be avoided to the extent practicable.

d. 33 CFR Part 320.4(r)(2) All compensatory mitigation will be for significant resource losses which are specifically identifiable, reasonably likely to occur, and of importance to the human or aquatic environment. Also, all mitigation will be directly related to the impacts of the proposal, appropriate to the scope and degree of those impacts, and reasonably enforceable.

4. Replies/Comments Interested parties are invited to submit to this office written comments, postmarked or delivered by the expiration date of this public notice. All responses must refer to file number 00-900-001-0. Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held. Requests for public hearings shall state, in detail, the reasons for holding a public hearing. A request may be denied if substantive reasons for holding a hearing are not provided or if there is otherwise no valid interest to be served.

Replies concerning this proposed mitigation policy may be addressed to Gary R. Mannesto, Chief, Regulatory Office, Engineering and Technical Services, Detroit District, Corps of Engineers, P.O. Box 1027, Detroit, MI 48231-1027.

5. Regulatory Authority: This proposal will be reviewed according to the provisions of Section 10 of the Rivers and Harbor Act of 1899 and Section 404 of the Clean Water Act.

6. Public Interest Review: The development and implementation of this mitigation policy will be based on evaluation of the probable impact, including cumulative impacts, on the public interest. That decision will reflect the national/state concerns for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue must be balanced against reasonably foreseeable detriments. All relevant factors will be considered, including economics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people. The Corps is soliciting comments from the public; Federal, state and local agencies and officials, Indian tribes and other interested parties in order to consider and evaluate the impacts of this policy. Comments received will be considered to determine whether to issue, modify, condition, or abandon this policy. Comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and public interest factors listed above. Comments may be used in the preparation of environmental documents pursuant to the National Environmental Policy Act. Comments are also used to determine the overall public interest of the policy.

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12. Questions on this matter may be directed to Henry Rosenfield at the Corps of Engineers address listed above, or telephone number (313) 226-7718.

FOR THE DISTRICT ENGINEER:

Gary R. Mannesto  
Chief, Regulatory Office  
Engineering and Technical Services

NOTICE TO POSTMASTERS:

We request that the above notice be conspicuously and continuously posted for 60 days from the date of issuance of this notice.

